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Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

**LESLIE ARTHUR BYRD,**

Petitioner,

v.

**ROBERT J. HERNANDEZ, WARDEN,**

Respondent.

08-CV-0651 JM (AJB)

**DECLARATION OF GREGORY J.  
MARCOT SUPPORTING  
RESPONDENT'S EX PARTE  
APPLICATION FOR AN ORDER  
EXTENDING THE TIME FOR HIM TO  
RESPOND TO THE PETITION FOR  
WRIT OF HABEAS CORPUS**

Magistrate Judge: The Honorable  
Anthony J. Battaglia

I, Gregory J. Marcot, declare and state the following:

1. I am an attorney at law, duly admitted and licensed to practice law before this Court. I am employed as a Deputy Attorney General for the State of California in the Correctional Writs and Appeals department. In that capacity, I am the attorney representing Respondent in this matter. The following facts are based on my own personal knowledge, except for those facts based on information and belief, which I believe to be true. If called upon as a witness, I could, and would, competently testify about the following facts.

1           2. I am informed and believe that on April 21, 2008, this Court issued an order that  
2 requires Respondent to respond to the Petition for Writ of Habeas Corpus filed by state inmate  
3 Leslie Byrd by either filing a Motion to Dismiss on or before June 4, 2008, or by filing an  
4 Answer to the Petition by June 19, 2008.

5           3. Upon receiving the Court's order, a paralegal in our office contacted the state  
6 courts in order to obtain copies of the habeas petitions pertinent to this matter that Petitioner filed  
7 in the state courts, including the corresponding orders from the courts.

8           4. As of the date of this declaration, I have not received any of Petitioner's state  
9 court records. I need to review these documents in order to analyze whether appropriate grounds  
10 exist for a Motion to Dismiss.

11           5. Since I have not had the opportunity to review Petitioner's state court records, I  
12 am unable to reasonably ascertain whether there are viable grounds for a Motion to Dismiss.  
13 Until I have had a chance to fully analyze the state court records, I cannot determine whether a  
14 Motion to Dismiss would be proper in this matter. Furthermore, I do not anticipate that I will  
15 receive the relevant documents and have an opportunity to analyze their content until after the  
16 deadline set by this Court to file Respondent's Motion to Dismiss has elapsed.

17           6. Therefore, I respectfully request, on behalf of Respondent, that the date for  
18 Respondent to file and serve his Motion to Dismiss be extended through July 7, 2008, and the  
19 deadline to file an Answer be extended through July 21, 2008.

20           7. Respondent has not previously requested an extension of time in this matter.

21           8. This request for an extension of time is made in good faith and is not made to  
22 harass Petitioner, unduly delay the resolution of this matter, or for any other improper purpose  
23 whatsoever.

24           9. I do not believe that Petitioner will be prejudiced by a brief delay in the  
25 consideration of his claims. Thus, allowing respondent the short amount of time necessary to  
26 complete his analysis of the pertinent legal issues will serve the interests of justice without  
27 materially prejudicing or unduly benefitting either side.

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1           10. Petitioner, who is incarcerated, will receive a copy of this ex parte application by  
2 mail at the address he provided to the Court.

3           I declare under penalty of perjury under the laws of the United States of America that  
4 the foregoing is true and correct and that this declaration was executed on June 2, 2008, in San  
5 Diego, California.

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/s/ Gregory J. Marcot

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Gregory J. Marcot  
Deputy Attorney General

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Byrd v. Hernandez**

No.: **08-CV-0651 JM (AJB)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 2, 2008, I served the attached **DECLARATION OF GREGORY J. MARCOT SUPPORTING RESPONDENT'S EX PARTE APPLICATION FOR AN ORDER EXTENDING THE TIME FOR HIM TO RESPOND TO THE PETITION FOR WRIT OF HABEAS CORPUS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

LESLIE ARTHUR BYRD  
CDC # D-30420  
RICHARD J. DONOVAN  
CORRECTIONAL FACILITY AT ROCK  
MOUNTAIN  
P.O. BOX 799006  
SAN DIEGO, CA 92179-9006

IN PRO PER

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 2, 2008, at San Diego, California.

S. Banks

Declarant



Signature